



**6712-01**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 64**

**[CG Docket No. 02-278; FCC 20-140; FRS 17118]**

**Exemptions Implemented Under the Telephone Consumer Protection Act of 1991**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Commission proposes measures to implement section 8 of the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act (TRACED Act) and seeks comment on how to best implement it. As directed by the TRACED Act, the Commission seeks to ensure that any exemption the Commission has granted under the Telephone Consumer Protection Act (TCPA) for calls to residential lines or for calls to wireless numbers includes requirements with respect to the classes of parties that may make such calls; the classes of parties that may be called; and the number of such calls that may be made to a particular called party. The Commission also seeks comment on any conditions that are necessary to ensure that the existing exemptions for calls made to residential telephone lines satisfy section 8 of the TRACED Act and proposes to allow residential consumers to opt out of any calls made pursuant to an exemption.

**DATES:** Comments are due on or before **[INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, and reply comments are due on or before **[INSERT DATE 25 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** You may submit comments, identified by CG Docket No. 02-278, by any of the

following methods:

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12<sup>th</sup> Street, SW, Washington DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, DA 20-304 (March 19, 2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

**FOR FURTHER INFORMATION CONTACT:** Richard D. Smith of the Consumer and

Governmental Affairs Bureau at (717) 338-2797 or [Richard.Smith@fcc.gov](mailto:Richard.Smith@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission’s notice of proposed rulemaking (*NPRM*), in CG Docket No. 02-278, FCC 20-140, adopted and released on October 1, 2020. The full text of document is available for public inspection and copying via the Commission’s Electronic Comment Filing System (ECFS). To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice).

This matter shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules. 47 CFR 1.1200 through 1.1216. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substances of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. *See* 47 CFR 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in § 1.1206(b) of the Commission’s rules, 47 CFR 1.1206(b).

#### **INITIAL PAPERWORK REDUCTION ACT OF 1995 ANALYSIS**

The *NPRM* seeks comment on proposed rule amendments that may result in modified information collection requirements. If the Commission adopts any modified information collection requirements, the Commission will publish a notice in the **Federal Register** inviting the public to comment on the requirements, as required by the Paperwork Reduction Act. Pub. L. 104-13; 44 U.S.C. 3501-3520. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, the Commission seeks comment on how it might further reduce the information

collection burden for small business concerns with fewer than 25 employees. Pub. L. 107-198; 44 U.S.C. 3506(c)(4).

## **SYNOPSIS**

1. In this notice of proposed rulemaking (*NPRM*), the Commission, to comply with the TRACED Act, seeks comment on the need to amend exemptions the Commission has previously carved out. Those exemptions are: (1) non-commercial calls to a residence; (2) commercial calls to a residence that do not constitute telemarketing; (3) tax-exempt nonprofit organization calls to a residence; (4) Health Insurance Portability and Accountability Act of 1996 (HIPAA)-related calls to a residence; (5) package delivery-related calls to a wireless number; (6) financial institution calls to a wireless number; (7) healthcare-related calls to a wireless number; (8) inmate calling service calls to a wireless number; and (9) cellular carrier calls to their own subscribers. The Commission seeks comment on these and any other issues that may allow it to implement section 8 of the TRACED Act. The Commission proposes to codify in the Commission's rules all existing exemptions under 47 U.S.C. 227(b)(2)(C).

### **A. Non-Commercial Calls to a Residential Line**

2. The Commission has exempted calls “not made for a commercial purpose” from the prohibition on artificial or prerecorded-voice messages to residential telephone lines. *See* 47 CFR 64.1200(a)(3)(ii). The Commission seeks comment on how to amend this rule as needed. Because this exemption is predicated on calls not being made for a commercial purpose, the Commission proposes to deem these classes of parties as “informational callers” that do not have a commercial purpose. Is this limitation sufficient to protect both callers availing themselves of the exemption as well as consumers receiving calls from such organizations? To implement section 8's directive to adopt requirements with respect to the number of calls that may be made

to a particular party, the Commission seeks comment on whether to adopt a numerical limit on the number of calls that may be made to a called party under this exemption or whether to specify in the rules that a calling party shall not be limited in terms of the number of calls it makes under the exemption. If the Commission adopts a limit, should it be an overall limit or a limit on the number of calls that may be made to a called party each week or month?

Additionally, the Commission proposes to prohibit additional calls under this exemption after a called party has made an opt-out request to the calling party.

3. The Commission seeks comment on the potential burdens that these opt-out requirements could impose on those entities that make calls under this exemption, including ways to minimize any such burdens. How long would it take to implement the requirements in § 64.1200(d) of the Commission's rules for those calls made pursuant to an exemption under 47 U.S.C. 227(b)(2)(B)? Would the time necessary for entities to honor opt-out requests vary according to the size of the calling entity? Are there ways to mitigate any such burdens on smaller entities? The Commission also seeks comment on the extent to which entities that make such artificial or prerecorded-voice calls for a non-commercial purpose may already offer, on a voluntary basis, an opt-out mechanism for those subscribers who request that they no longer be called.

**B. Commercial Calls to a Residential Line that Do Not Constitute  
Telemarketing**

4. The Commission has exempted calls made for a commercial purpose but that do not include or introduce an advertisement or constitute telemarketing from the prohibition on using an artificial or prerecorded-voice message to residential telephone lines. *See* 47 CFR 64.1200(a)(3)(iii). The Commission seeks comment on how to amend this rule as needed.

Because this exemption is predicated on calls not including an advertisement or constituting telemarketing, the Commission proposes to deem these classes of parties as “informational callers” to the extent they are only providing information or “transactional callers” that are calling to complete or confirm a commercial transaction with the called party. Is this limitation sufficient to protect both callers availing themselves of the exemption as well as consumers receiving calls from such organizations? To implement section 8’s directive to adopt requirements with respect to the number of such calls that may be made to a particular called party, the Commission seeks comment on whether to adopt a numerical limit on the number of calls that may be made to a called party under this exemption, or whether to specify in the rules that a calling party shall not be limited in terms of the number of calls it makes under the exemption. If the Commission adopts a limit, should it be an overall limit or instead a limit on the number of calls that may be made to a called party each week or month? Additionally, the Commission proposes to prohibit additional calls under this exemption after a called party has made an opt-out request to the calling party.

**C. Tax-exempt Nonprofit Organization Calls to a Residential Line**

5. The Commission has exempted calls made by or on behalf of a tax-exempt nonprofit organization from the prohibition on using an artificial or prerecorded voice to deliver a message to a residential telephone line. *See* 47 CFR 64.1200(a)(3)(iv). The Commission seeks comment on how to amend this rule as needed. To implement section 8’s directive to adopt requirements with respect to the number of such calls that may be made to a particular called party, the Commission seeks comment on whether to adopt a numerical limit on the number of calls that may be made to a called party under this exemption, or whether to specify in the rules that a calling party shall not be limited in terms of the number of calls it makes under the

exemption. If the Commission adopts a limit, should it be an overall limit or instead a limit on the number of calls that may be made to a called party each week or month? Additionally, the Commission proposes to prohibit additional calls under this exemption after a called party has made an opt-out request to the calling party.

**D. HIPAA Calls to a Residential Line**

6. The Commission has exempted HIPAA-related calls that deliver a healthcare message from the prohibition on using an artificial or prerecorded voice to deliver a message to residential telephone lines. *See* 47 CFR 64.1200(a)(3)(v). The Commission seeks comment on how to amend this rule as needed. To implement section 8's directive to adopt requirements with respect to the number of such calls that may be made to a particular called party, the Commission seeks comment on whether to adopt a numerical limit on the number of calls that may be made to a called party under this exemption, or whether to specify in the rules that a calling party shall not be limited in terms of the number of calls it makes under the exemption. If the Commission adopts a limit, should it be an overall limit or instead a limit on the number of calls that may be made to a called party each week or month? Additionally, the Commission proposes to prohibit additional calls under this exemption after a called party has made an opt-out request to the calling party.

**E. Package Delivery Calls to a Wireless Number**

7. The Commission has exempted package delivery calls to wireless consumers subject to several conditions. *See Cargo Airline Association Petition for Expedited Declaratory Ruling*, CG Docket No. 02-278, Order, published at 80 FR 15688, March 25, 2015. These conditions appear to satisfy section 8 of the TRACED Act. Among other things, these conditions limit the class of calling parties (package delivery companies), the class of called

parties (package recipients), and the number of calls (one notification for each package, with one additional notification for up to two follow-up attempts to obtain a recipient's signature if a signature is needed for delivery). The Commission seeks comment on these views and whether the exemption remains in the public interest. The Commission also seeks comment on how to amend this exemption to the extent needed to comply with section 8 of the TRACED Act.

**F. Financial Institution Calls to a Wireless Number**

8. The Commission has exempted calls made by financial institutions subject to certain conditions. *See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, WC Docket No. 07-135, Declaratory Ruling and Order, published at 80 FR 61129, October 9, 2015. These conditions appear to satisfy section 8 of the TRACED Act. The exemption's conditions include limitations on the class of calling parties (financial institutions), the class of called parties (customers of the financial institution), and the number of calls (no more than three calls per event over a three-day period for each affected account). The Commission seeks comment on these views and whether the exemption remains in the public interest. The Commission also seeks comment on how to amend this exemption to the extent needed to comply with section 8 of the TRACED Act.

**G. Healthcare Provider Calls to a Wireless Number**

9. The Commission has exempted healthcare provider calls subject to several conditions. *See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, WC Docket No. 07-135, Declaratory Ruling and Order, published at 80 FR 61129, October 9, 2015. These conditions appear to satisfy section 8 of the TRACED Act. They limit the class of calling parties (by or on behalf of a "covered entity" or its "business associate" as defined by HIPAA), the class of called parties (patients), and the number of calls



(one message/call per day, up to a maximum of three voice calls or text messages combined per week). The Commission seeks comment on these views and whether the exemption remains in the public interest. The Commission also seeks comment on how to amend this exemption to the extent needed to comply with section 8 of the TRACED Act.

#### **H. Inmate Calling Service Calls to a Wireless Number**

10. The Commission has exempted calls from inmate phone service providers subject to several conditions. *See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, WC Docket No. 07-135, Declaratory Ruling and Order, published at 80 FR 61129, October 9, 2015. These conditions appear to satisfy section 8 of the TRACED Act. They limit the class of calling parties (inmate collect call service providers), the class of called parties (wireless subscribers with whom the service provider needs to establish a billing arrangement for future inmate collect calls), and the number of calls (no more than three notifications following an unsuccessful collect call). The Commission seeks comment on these views and whether the exemption remains in the public interest. The Commission also seeks comment on how to amend this exemption to the extent needed to comply with section 8 of the TRACED Act.

#### **I. Cellular Carrier Calls to Subscribers**

11. In 1992, the Commission concluded that cellular carriers need not obtain additional consent from their subscribers prior to initiating autodialed or artificial or prerecorded-voice calls for which the cellular subscriber is not charged because such calls are not prohibited by 47 U.S.C. 227(b)(1)(A)(iii). This ruling limited the class of calling parties (cellular carrier) and the class of called parties (the cellular carrier's own subscriber), but it does not appear to limit the number of calls a calling party may make to a called party beyond not charging the

subscriber for the call. The Commission seeks comment on how to amend this exemption as needed. To implement section 8's directive to adopt requirements with respect to the number of such calls that may be made to a particular called party, the Commission seeks comment on whether to adopt a numerical limit on the number of calls that may be made to a called party under this exemption, or whether to specify in the rules that a calling party shall not be limited in terms of the number of calls it makes under the exemption. If the Commission adopts a limit, should it be an overall limit or instead a limit on the number of calls that may be made to a called party each week or month? Additionally, the Commission proposes to prohibit additional calls under this exemption after a called party has made an opt-out request to the calling party.

#### **INITIAL REGULATORY FLEXIBILITY ANALYSIS**

12. As required by the Regulatory Flexibility Act of 1980, as amended, the Commission has prepared the Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the *NPRM*. Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM* provided.

##### **A. Need for, and Objectives of, the Proposed Rules**

13. The TRACED Act directs the Commission, no later than December 30, 2020, to “prescribe such regulations or amend such existing regulations, as necessary to ensure that [any] such exemption [issued under 47 U.S.C. 227(b)(2)(B) or (C) of the TCPA] contains each requirement [listed in section 8(a) of the TRACED Act].” Section 8(b) of the TRACED Act provides that “[t]o the extent such an exemption contains such a requirement before such date of enactment, nothing in this section or the amendments made by this section shall be construed to require the Commission to prescribe or amend regulations relating to such requirement.”

14. The *NPRM* seeks comment on whether to amend the exemptions the Commission has previously carved out to comply with the TRACED Act. Those exemptions are: (1) non-commercial calls to a residence; (2) commercial calls to a residence that do not constitute telemarketing; (3) tax-exempt nonprofit organization calls to a residence; (4) HIPAA-related calls to a residence; (5) package delivery-related calls to a wireless number; (6) financial institution calls to a wireless number; (7) healthcare-related calls to a wireless number; (8) inmate calling service calls to a wireless number; and (9) cellular carrier calls to their own subscribers. The *NPRM* seeks comment on these and any other issues that may allow the Commission to implement section 8 of the TRACED Act and the TCPA's objective in balancing individual privacy rights with legitimate communications and on ways to minimize any compliance burdens for both small and large entities that make calls pursuant to one of the exemptions in the law. The *NPRM* proposes to codify all existing exemptions granted under 47 U.S.C. 227(b)(2)(C).

**B. Legal Basis**

15. The proposed rules are authorized under sections 4(i), 4(j), and 227 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 227, and section 8 of the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence Act, Pub. L. 116-105, 133 Stat. 3274.

**C. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements**

16. The *NPRM* generally does not propose specific limits on any existing exemptions in the rules and thus contains no specific reporting or recordkeeping requirements. The *NPRM* does, however, seek comment on requiring entities making artificial or prerecorded-voice calls to residential numbers pursuant to any of the exemptions adopted under 47 U.S.C. 227(b)(2)(B) to

allow consumers to opt out of any future calls. In such cases, a caller may need to record and track such opt-out requests in order to avoid making any additional calls to certain consumers. In such cases, a caller may need to record and track such opt-out requests in order to avoid making any additional calls to certain consumers.

**D. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

17. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

18. The *NPRM* specifically seeks comment on the timing necessary for entities that currently take advantage of exemptions from the TCPA to implement any new limitations the Commission might adopt on such exemptions. The *NPRM* considers, for example, different timing schedules for small and large entities subject to the TCPA rules. Specifically, the *NPRM* asks about the time necessary for entities to honor opt-out requests and whether that will vary according to the size of the entity. Finally, the *NPRM* seeks comment on different options available to entities to ensure they are complying with consumers' desire not to be contacted. It asks whether a caller should simply be permitted to provide a telephone number for opting out or whether the caller should provide an automated voice-response mechanism during the call for doing so. The *NPRM* considers any compliance costs for small businesses if the proposed rules are adopted.

19. The Commission expects to consider the economic impact on small entities, as identified in comments filed in response to the *NPRM* and this IRFA, in reaching its final conclusions and taking action in this proceeding.

**E. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules**

20. None.

**List of Subjects in 47 CFR Part 64**

Communications common carriers, Reporting and recordkeeping requirements,  
Telecommunications, Telephone.  
Federal Communications Commission.

**Marlene Dortch,**  
*Secretary,*  
*Office of the Secretary.*

## **Proposed Rules**

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 64 as follows:

### **PART 64 - MISCELLANEOUS RULES RELATING TO COMMON CARRIERS**

1. The authority citation for part 64 continues to read as follows:

**Authority:** 47 U.S.C. 154, 201, 202, 217, 218, 220, 222, 225, 226, 227, 227b, 228, 251(a), 251(e), 254(k), 262, 403(b)(2)(B), (c), 616, 620, 1401-1473, unless otherwise noted; Pub. L. 115-141, Div. P, sec. 503, 132 Stat. 348, 1091.

2. Amend § 64.1200 by revising paragraph (a)(1)(iv), adding paragraph (a)(9), and revising paragraphs (b)(2) and (3) and (d) to read as follows:

#### **§ 64.1200 Delivery restrictions.**

(a) \* \* \*

(1) \* \* \*

(iv) A person will not be liable for violating the prohibition in paragraph (a)(1)(iii) of this section when the call is placed to a wireless number that has been ported from wireline service and such call is a voice call; not knowingly made to a wireless number; and made within 15 days of the porting of the number from wireline to wireless service, provided the number is not already on the national do-not-call registry or caller's company-specific do-not-call list. A person will not be liable for violating the prohibition in paragraph (a)(1)(iii) of this section when making calls exempted by paragraph (a)(9) of this section.

\* \* \* \* \*

(9) A person will not be liable for violating the prohibition in paragraph (a)(1)(iii) of this section for making any call exempted in this paragraph (a)(9), provided that the call is not

charged to the called person or counted against the called person's plan limits on minutes or texts. As used in this paragraph (a)(9), the term "call" includes a text message, including a short message service (SMS) call.

(i) Calls made by a package delivery company to notify a consumer about a package delivery, provided that all of the following conditions are met:

(A) The notification must be sent only to the telephone number for the package recipient;

(B) The notification must identify the name of the package delivery company and include contact information for the package delivery company;

(C) The notification must not include any telemarketing, solicitation, or advertising content;

(D) The voice call or text message notification must be concise, generally one minute or less in length for voice calls or 160 characters or less in length for text messages;

(E) The package delivery company shall send only one notification (whether by voice call or text message) per package, except that one additional notification may be sent for each attempt to deliver the package, up to two attempts, if the recipient's signature is required for the package and the recipient was not available to sign for the package on the previous delivery attempt;

(F) The package delivery company must offer package recipients the ability to opt out of receiving future delivery notification calls and messages and must honor an opt-out request within a reasonable time from the date such request is made, not to exceed thirty days; and,

(G) Each notification must include information on how to opt out of future delivery notifications; voice call notifications that could be answered by a live person must include an automated, interactive voice- and/or key press-activated opt-out mechanism that enables the

called person to make an opt-out request prior to terminating the call; voice call notifications that could be answered by an answering machine or voice mail service must include a toll-free number that the consumer can call to opt out of future package delivery notifications; text notifications must include the ability for the recipient to opt out by replying “STOP.”

(ii) Calls made by an inmate collect call service provider following an unsuccessful collect call to establish a billing arrangement with the called party to enable future collect calls, provided that all of the following conditions are met:

(A) Notifications must identify the name of the inmate collect call service provider and include contact information;

(B) Notifications must not include any telemarketing, solicitation, debt collection, or advertising content;

(C) Notifications must be clear and concise, generally one minute or less;

(D) Inmate collect call service providers shall send no more than three notifications following each inmate collect call that is unsuccessful due to the lack of an established billing arrangement, and shall not retain the called party’s number after call completion or, in the alternative, after the third notification attempt; and

(E) Each notification call must include information on how to opt out of future calls; voice calls that could be answered by a live person must include an automated, interactive voice- and/or key press-activated opt-out mechanism that enables the called person to make an opt-out request prior to terminating the call; voice calls that could be answered by an answering machine or voice mail service must include a toll-free number that the consumer can call to opt out of future notification calls; and,

(F) The inmate collect call service provider must honor opt-out requests immediately.



(iii) Calls made by any financial institution as defined in section 4(k) of the Bank Holding Company Act of 1956, 15 U.S.C. 6809(3)(A), provided that all of the following conditions are met:

(A) Voice calls and text messages must be sent only to the wireless telephone number provided by the customer of the financial institution;

(B) Voice calls and text messages must state the name and contact information of the financial institution (for voice calls, these disclosures must be made at the beginning of the call);

(C) Voice calls and text messages are strictly limited to those for the following purposes: transactions and events that suggest a risk of fraud or identity theft; possible breaches of the security of customers' personal information; steps consumers can take to prevent or remedy harm caused by data security breaches; and actions needed to arrange for receipt of pending money transfers;

(D) Voice calls and text messages must not include any telemarketing, cross-marketing, solicitation, debt collection, or advertising content;

(E) Voice calls and text messages must be concise, generally one minute or less in length for voice calls (unless more time is needed to obtain customer responses or answer customer questions) or 160 characters or less in length for text messages;

(F) A financial institution may initiate no more than three messages (whether by voice call or text message) per event over a three-day period for an affected account;

(G) A financial institution must offer recipients within each message an easy means to opt out of future such messages; voice calls that could be answered by a live person must include an automated, interactive voice- and/or key press-activated opt-out mechanism that enables the call recipient to make an opt-out request prior to terminating the call; voice calls that could be

answered by an answering machine or voice mail service must include a toll-free number that the consumer can call to opt out of future calls; text messages must inform recipients of the ability to opt out by replying “STOP,” which will be the exclusive means by which consumers may opt out of such messages; and,

(H) A financial institution must honor opt-out requests immediately.

(iv) Calls made by healthcare providers, which include hospitals, emergency care centers, medical physician or service offices, poison control centers, and other healthcare professionals, provided that all of the following conditions are met:

(A) Voice calls and text messages must be sent only to the wireless telephone number provided by the patient;

(B) Voice calls and text messages must state the name and contact information of the healthcare provider (for voice calls, these disclosures would need to be made at the beginning of the call);

(C) Voice calls and text messages are strictly limited to those for the following purposes: appointment and exam confirmations and reminders, wellness checkups, hospital pre-registration instructions, pre-operative instructions, lab results, post-discharge follow-up intended to prevent readmission, prescription notifications, and home healthcare instructions;

(D) Voice calls and text messages must not include any telemarketing, solicitation, or advertising; may not include accounting, billing, debt-collection, or other financial content; and must comply with HIPAA privacy rules, 45 CFR 160.103;

(E) Voice calls and text messages must be concise, generally one minute or less in length for voice calls or 160 characters or less in length for text messages;

(F) A healthcare provider may initiate only one message (whether by voice call or text

message) per day to each patient, up to a maximum of three voice calls or text messages combined per week to each patient;

(G) A healthcare provider must offer recipients within each message an easy means to opt out of future such messages; voice calls that could be answered by a live person must include an automated, interactive voice- and/or key press-activated opt-out mechanism that enables the call recipient to make an opt-out request prior to terminating the call; voice calls that could be answered by an answering machine or voice mail service must include a toll-free number that the consumer can call to opt out of future healthcare calls; text messages must inform recipients of the ability to opt out by replying "STOP," which will be the exclusive means by which consumers may opt out of such messages; and,

(H) A healthcare provider must honor opt-out requests immediately.

(b) \* \* \*

(2) During or after the message, state clearly the telephone number (other than that of the autodialer or prerecorded message player that placed the call) of such business, other entity, or individual. The telephone number provided may not be a 900 number or any other number for which charges exceed local or long distance transmission charges. For telemarketing messages and messages made pursuant to an exemption under paragraphs (a)(3)(ii) through (v) of this section to residential telephone subscribers, such telephone number must permit any individual to make a do-not-call request during regular business hours; and

(3) In every case where the artificial or prerecorded-voice telephone message is made pursuant to an exemption under paragraphs (a)(3)(ii) through (v) of this section or includes or introduces an advertisement or constitutes telemarketing and is delivered to a residential telephone line or any of the lines or telephone numbers described in paragraphs (a)(1)(i) through

(iii) of this section, provide an automated, interactive voice- and/or key press-activated opt-out mechanism for the called person to make a do-not-call request, including brief explanatory instructions on how to use such mechanism, within two (2) seconds of providing the identification information required in paragraph (b)(1) of this section. When the called person elects to opt out using such mechanism, the mechanism must automatically record the called person's number to the caller's do-not-call list and immediately terminate the call. When the artificial or prerecorded-voice telephone message is left on an answering machine or a voice mail service, such message must also provide a toll free number that enables the called person to call back at a later time and connect directly to the automated, interactive voice- and/or key press-activated opt-out mechanism and automatically record the called person's number to the caller's do-not-call list.

\* \* \* \* \*

(d) No person or entity shall initiate any artificial or prerecorded-voice telephone call pursuant to an exemption under paragraphs (a)(3)(ii) through (v) of this section or any call for telemarketing purposes to a residential telephone subscriber unless such person or entity has instituted procedures for maintaining a list of persons who request not to receive such calls made by or on behalf of that person or entity. The procedures instituted must meet the following minimum standards:

(1) *Written policy.* Persons or entities making artificial or prerecorded-voice telephone calls pursuant to an exemption under paragraphs (a)(3)(ii) through (v) of this section or calls for telemarketing purposes must have a written policy, available upon demand, for maintaining a do-not-call list.

(2) *Training of personnel.* Personnel engaged in making artificial or prerecorded-voice

telephone calls pursuant to an exemption under paragraphs (a)(3)(ii) through (v) of this section or who are engaged in any aspect of telemarketing must be informed and trained in the existence and use of the do-not-call list.

(3) *Recording, disclosure of do-not-call requests.* If a person or entity making an artificial or prerecorded-voice telephone call pursuant to an exemption under paragraphs (a)(3)(ii) through (v) of this section or any call for telemarketing purposes (or on whose behalf such a call is made) receives a request from a residential telephone subscriber not to receive calls from that person or entity, the person or entity must record the request and place the subscriber's name, if provided, and telephone number on the do-not-call list at the time the request is made. Persons or entities making such calls (or on whose behalf such calls are made) must honor a residential subscriber's do-not-call request within a reasonable time from the date such request is made. This period may not exceed thirty days from the date of such request. If such requests are recorded or maintained by a party other than the person or entity on whose behalf the call is made, the person or entity on whose behalf the call is made will be liable for any failures to honor the do-not-call request. A person or entity making an artificial or prerecorded-voice telephone call pursuant to an exemption under paragraphs (a)(3)(ii) through (v) of this section or any call for telemarketing purposes must obtain a consumer's prior express permission to share or forward the consumer's request not to be called to a party other than the person or entity on whose behalf a call is made or an affiliated entity.

(4) *Identification of callers and telemarketers.* A person or entity making an artificial or prerecorded-voice telephone call pursuant to an exemption under paragraphs (a)(3)(ii) through (v) of this section or any call for telemarketing purposes must provide the called party with the name of the individual caller, the name of the person or entity on whose behalf the call is being

made, and a telephone number or address at which the person or entity may be contacted. The telephone number provided may not be a 900 number or any other number for which charges exceed local or long distance transmission charges.

(5) *Affiliated persons or entities.* In the absence of a specific request by the subscriber to the contrary, a residential subscriber's do-not-call request shall apply to the particular entity making the call (or on whose behalf a call is made), and will not apply to affiliated entities unless the consumer reasonably would expect them to be included given the identification of the caller and (for telemarketing calls) the product being advertised.

(6) *Maintenance of do-not-call lists.* A person or entity making artificial or prerecorded-voice telephone calls pursuant to an exemption under paragraphs (a)(3)(ii) through (v) of this section or any call for telemarketing purposes must maintain a record of a consumer's request not to receive further calls. A do-not-call request must be honored for 5 years from the time the request is made.

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